

APPEAL NO. 92137
FILED MAY 20, 1992

On February 19, 1992, a contested case hearing was held in _____, Texas, with (hearing officer) presiding. (Hearing officer) determined that the claimant, respondent, had sustained an injury in the course and scope of his employment on (date of injury), with (employer).

The employer has filed the appeal in this case asking that the decision be reviewed and reversed. The employer had not become a party in the hearing below and the carrier disputed liability for the claim. Neither the carrier nor the respondent has filed an appeal or a response. Although the employer indicates that it sent a copy of the appeal to the respondent, service of the appeal on the carrier is not indicated.

DECISION

Because no timely appeal has been filed by either party to the hearing, the appeals panel has no jurisdiction to consider the appeal.

The employer lacks standing to appeal because the employer did not become a party to the benefit contested case hearing. The Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. Article 8308-6.41 (Vernon Supp. 1992) provides for the appeal of the hearing officer's decision by "a party."

Articles 8308-5.10 (1), (2), and (4) of the 1989 Act (also known as the Employer's Bill of Rights) permit an employer to "(1) be present at all administrative proceedings relating to an employee's claim; (2) to present relevant evidence relating to an employee's claim at any proceeding; [and] (4) to contest the compensability of any injury if the insurance carrier accepts liability for payment of benefits" In our view, while the exercise of an employer's rights to be present and to present relevant evidence may involve such employer as a participant in a proceeding, an employer does not become a party unless the insurance carrier accepts liability but the employer contests compensability, as indicated in Article 8308-5.10(4).

We would point out that our view is buttressed by several provisions of the 1989 Act and the rules of the Texas Workers' Compensation Commission, which draw distinctions between a claimant, an insurance carrier, and an employer, as well as between a party and a participant in a proceeding. Chapters B, C, D, and E of Article 6 (Adjudication of Disputes) of the 1989 Act contain numerous references to a "party" or "parties" in provisions set forth for conducting benefit review conferences, contested case hearings, arbitrations, and appeals. For instance, Art. 8308-6.04 provides for the representation of claimants and insurance carriers at benefit review conferences, contested case hearings, and arbitrations, but omits any reference to the representation of employers. Article 8308-6.12(e) states that written notice of a benefit review conference shall be mailed by the commission "to the parties to the claim and the employer" and further provides that "[a] party who fails to attend the [benefit review conference] without good cause . . . commits a Class D administrative

violation. . . ."

There are similar provisions for administrative penalties for "parties" who fail to attend arbitration conferences and contested case hearings. Articles 8308-6.24 (d); 6.34(f). An employer's right to be present at all administrative hearings is obviously elective, and an employer who failed to attend a proceeding would not be subject to such administrative penalties unless the employer had become a party.

In short, the distinctions drawn between a party and an employer in such provisions of the Act indicate that employers are not automatically considered as "parties" to the claim when the carrier is contesting compensability.

The rules of the Commission draw similar distinctions. We note that Tex. W.C. Comm'n Rules, 28 TEX. ADMIN. CODE § 140.1 (Rule 140.1) defines a party to a proceeding as a "person entitled to take part in a proceeding because of a direct legal interest in the outcome." [emphasis added]. Rule 140.3, (relating to expedited proceedings) states that a dispute involves compensability "when the carrier or the employer contests the compensability of any injury, as provided by the Act, § 5.10(4) or 5.21." Rule 141.5(a) defines "participant" to mean "an individual entitled or permitted to attend and take part in a benefit review conference. Participants include: (1) the parties; (2) the parties' representatives; (3) the employer exercising the right to present evidence relevant to the disputed issue or issues; and (4) any other individual, at the discretion of the benefit review officer." Rule 141.1(a) provides that a request for a benefit review conference may be made "by a claimant, a subclaimant, a carrier, or an employer who has contested compensability." (emphasis added). See *a/so* Rule 142.13 (relating to discovery), Rule 142.17 (relating to hearing transcripts), and Rule 142.19 (relating to form interrogatories for use by claimants and carriers only), for similar distinctions between employers and parties.

Rule 143.1 defines an "appellant" as a "party" to a contested case hearing who is dissatisfied with the decision of the hearing officer. We have earlier ruled in a similar situation that an employer who is not a party at the contested case hearing may not appeal the decision. Texas Workers' Compensation Commission Appeals Panel Decision No. 92110 (Docket No. GA-91130095-01-CC) decided May 11, 1992. We conclude that the employer herein, who did not become a party to the contested case hearing below, but was merely a participant, lacks standing to appeal from the decision below. The appeal is dismissed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge